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IN THE

Supreme Court of the United States

OCTOBER TERM, 1940

No. 237

GUY T. HELVERING, Commissioner of Internal Revenue,
Petitioner,

v.

EDYTH LE GIERSE and BANKERS TRUST COMPANY, as Executors of the Estate of Cecile Le Gierse, Deceased,
Respondents.

Respondents' Brief in Opposition to Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit

FREDERICK O. MCKENZIE,
Attorney for Respondents.

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Respondents' Brief in Opposition to Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit

This brief is filed in opposition to a petition by Guy T. Helvering, Commissioner of Internal Revenue, for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit seeking the review of a judgment of said Circuit Court of Appeals entered in the above cause on April 13, 1940, affirming the decision of the Board of Tax Appeals.

Opinions Below

The opinion of the Board of Tax Appeals (R. 18-29) is reported in 39 B.T.A. 1134. The opinion of the Circuit

Court of Appeals (R. 72-74) is reported in 110 F. (2d) 734.

Jurisdiction

The judgment of the Circuit Court of Appeals was entered on April 13, 1940 (R. 74). The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925.

Question Presented

The question presented is whether the proceeds of a life insurance policy taken out by the decedent on her own life are entitled to the estate tax exemption as provided by Section 302(g) of the Revenue Act of 1926, as amended, where the decedent, on the same day, purchased a straight life annuity from the insurance company and where it appears that the life insurance policy would not have been issued to the decedent without the annuity but that the annuity would have been so issued without the life insurance policy.

Statutes and Regulations Involved

The pertinent statutes and regulations involved are set forth in the Appendix to the petition (pp. 7-14).

Statement of Facts

The facts as found by the Board of Tax Appeals are substantially set forth in the petition (pp. 2-4). The complete findings of fact by the Board appear in the record (R. pp. 19-28).

Argument

The respondents recognize that the decision of the court below is substantially in conflict with two other recent decisions in the Circuit Courts of Appeals. *Commissioner* v. *Tyler* (C. C. A. 8th), decided April 29, 1940, not yet officially reported but found in 1940 C. C. H., Vol. 4, Par. 9439, and *Commissioner* v. *Keller* (C. C. A. 3d), decided May 28, 1940, not yet officially reported but found in 1940 C. C. H., Vol. 4, Par. 9494. However, it is submitted that the decision of the court below is eminently sound and that it need not be reviewed. Such decision unanimously affirmed the decision of the Board of Tax Appeals in holding that the proceeds of life insurance in question fall squarely within the exemption provided by Section 302(g) of the Revenue Act of 1926, as amended.

The petitioner would restrict the plain language of the exempting statute. He would qualify the exemption by permitting it to apply to certain types of insurance only. Such does not appear to have been the intention of Congress. A restriction of the exempting statute such as the petitioner urges would consequently necessitate an appropriate amendment by Congress.

Conclusion

For the foregoing reasons the petition for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit should be denied.

Respectfully submitted,

FREDERICK O. MCKENZIE,
Attorney for Respondents.

July 25, 1940.